

Service Date: June 20, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF GOINTERNET.NET,	)	
FEDERAL TRANSTEL, INC., AND	)	
I4MATION, INC.	)	UTILITY DIVISION
	)	DOCKET NO. D2002.10.126
Complaint by the Montana Public Service	)	
Commission Regarding Unauthorized Charges	)	ORDER NO. 6495
on Customers' Telecommunications Bills	)	

**PROCEDURAL ORDER**

**NOTE: PLEASE READ CAREFULLY. PROVISIONS OF THIS ORDER MAY MODIFY PREVIOUS PSC PROCEDURAL AND SCHEDULING POLICY. THIS IS NOT A PROPOSED ORDER. RECONSIDERATION IS AVAILABLE FOR GOOD CAUSE.**

Introduction

1. The Public Service Commission (PSC), itself or through delegation to PSC staff, hereby establishes the procedure and schedule to be followed in the above docket. Any request for reconsideration of this Order must be submitted to the PSC within 10 days of the service date above. A request for reconsideration will be scheduled for the PSC's next available business meeting following the request and the parties will be informed of the action taken. This Order is effective immediately and remains effective unless and until modified by action of the PSC.

Parties

2. In this order the term "parties" include Federal Transtel, Inc., I4MATION, Inc., and GoInternet.Net.

Service and Filing

3. Copies of all pleadings, motions, discovery requests and responses, briefs and all other documents shall be filed with the Montana Public Service Commission (Commission or PSC) and served on all parties. In the case of a filing directed to the PSC, such as motions, testimony, and

briefs, the original and ten copies shall be filed. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the PSC, and parties specifically requesting service of discovery responses.

4. Service and filing by means of facsimile transmission is prohibited. Deadlines for service and filing are deadlines for the service and filing of the original and copies as required.

5. An original and ten (10) copies of all discovery and other documents, except proprietary documents, must be filed with the PSC. Only one copy of proprietary documents shall be filed – on yellow paper.

#### Schedule

6. All dates listed in the following schedule are receipt dates (filing and service) unless otherwise specified. Procedures, e.g., briefing and transcript order, after the hearing shall be set at the close of hearing. Discovery requests may be submitted at any time up to the discovery date fixed by this schedule. Discovery requests submitted at least 14 days prior to that date must be answered at least 4 days prior to that date. All other discovery requests must be answered by the response date fixed by this schedule.

- (a) October 28, 2002: Complaint issued by PSC.
- (b) November 26, 2002: ILD Telecommunications response to Complaint filed
- (c) December 6, 2002: GoInternet's Answer filed with PSC
- (d) January 28, 2003: ESBI dismissed (Notice of Commission Action dated January 28, 2003)
- (e) February 28, 2003: GoInternet's First Set of Data Requests served on PSC
- (f) March 5, 2003: Amended Complaint issued by PSC
- (g) April 4, 2003: PSC responses to GoInternet's First Set of Data Requests
- (h) April 21, 2003: Amended Complaint served on OAN and I4MATION
- (i) May 21, 2002: ILD dismissed (Notice of Commission Action dated May 21, 2003)

- (j) May 22, 2003: OAN response filed with Commission (Letter dated May 22, 2003 from Mark Staples, attorney for OAN, to Monica Tranel, PSC staff attorney)
- (k) July 7, 2003: Discovery deadline: written discovery to be served on all parties simultaneously
- (l) July 15, 2003: Discovery responses due
- (m) July 21, 2003: Pre-hearing opening motions to be filed with PSC
- (n) Week of August 12, 2003: Hearing commences and continues from day to day until concluded (daily transcript).

#### Ex Parte Communications

7. This proceeding is a contested case proceeding. In contested case proceedings most *ex parte* communications are prohibited. An *ex parte* communication is one between (i.e., to or from) a Commissioner and any person associated with a party in the contested case, when the communication involves the contested case or an issue in the contested case and all other parties to the contested case have not been given a reasonable opportunity to participate in the communication. PSC Commissioner receipt or conveyance of *ex parte* communications is prohibited by law. § 2-4-613, MCA. Party receipt or conveyance of *ex parte* communications is prohibited by law. Id. A few categories of *ex parte* communications, some pertaining to procedure and scheduling, may be allowed by law and are not prohibited (e.g., emergency motion for extension of time). Id. Any oral, written, electronic, or other form of communication of any kind, between (i.e., to or from) a PSC Commissioner and any person associated with any party to a contested case pending before the PSC may be or may include, inadvertently or otherwise, a prohibited *ex parte* communication. Parties and Commissioners being ever alert to this possibility, the prohibition applicable, and the corrective action necessary is extremely important in regard to any face-to-face, phone, letter, e-mail, or other encounter involving a party and a Commissioner.

#### Procedure

8. Unless otherwise stated in this Procedural Order the procedure governing this contested case is set forth in applicable provisions of: (a) Title 69, MCA, public utilities; (b) Title 2, Chapter 4, MCA, MAPA; (c) ARM Title 38, Chapter 2, procedural rules of the PSC; and (d) previous Orders of the PSC bearing specifically on the procedure and issues in this docket, if any.

#### Discovery

9. The term "discovery" includes all forms of discovery authorized by rules of the PSC. The term "written discovery" as used in this order includes data requests. The PSC urges all parties to conduct discovery through the use of data requests as the preferred method of discovery.

10. The PSC directs all parties to prepare data requests according to the following guidelines:

- (a) Parties must assign their data requests a request number (e.g., PSC-001). Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to the first defendant and PSC-009 through 016 to the second defendant).
- (b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.
- (c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d, and e). Requests must be limited to five (a-e) parts. If additional parts are necessary additional requests must be made. A single part request should be denoted by the request number only.

11. The party receiving the written discovery or data request has three days from receipt to object. The objection and notice thereof shall be filed with the PSC and served on all parties. Any

objection shall state the basis for the objection, setting forth the specific facts and legal rule upon which the objection is being made. Failure to specify a factual and legal basis for the objection shall be deemed a waiver of the objection. The PSC may dispose of objections by prompt ruling or may schedule arguments. Failure to timely object will be deemed acceptance of the request.

12. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must, within five days after receipt of such response, file before the PSC and serve all parties, the objection or motion and identify the relief requested. Any objection shall state the basis for the objection, setting forth the specific facts and legal rule upon which the objection is being made. Failure to specify a factual and legal basis for the objection shall be deemed a waiver of the objection. The PSC may dispose of such objection by prompt ruling or may schedule argument. The PSC will act to either sustain or overrule the objections. If an objection is sustained, a time period will be set within which a satisfactory response must be made.

13. Submission of written discovery after the period established will be allowed by leave of the PSC only. Requests will not be permitted unless the party making the request shows good cause as to why the request was not submitted within the time period allowed.

14. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting introduction of related matters in evidence; (c) action striking pleadings, testimony, or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) summary ruling in the case, defense, proceeding, or parts thereof.

#### Testimony and Evidence

15. All proposed exhibits shall be marked for the purposes of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter and presiding officer for the preferred manner of identifying exhibits.

16. When any testimony is based on a document, not previously filed with the PSC, copies of the document must be made available to each commissioner, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery

must have copies of each request and response available at the hearing for the court reporter, each commissioner, the PSC staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

17. The Montana Rules of Evidence in effect at the time of the hearing in this docket will govern at the hearing.

18. Any party to this proceeding having responded, itself or through agents, to written discovery from any other party or the PSC, shall have all persons authoring each response present and available as a witness at the hearing for the purposes of introduction of the discovery and examination thereon. Reasonable alternatives to this requirement, such as waiver of objection to introduction absent the author and waiver of right to cross-examine, agreed to by the parties may be accepted if approved by the PSC. Written discovery (not including transcripts of depositions on oral examination) and data requests will not be introduced at hearing unless done in accordance with applicable rules of evidence and through an appropriate witness subject to cross-examination or upon stipulation approved by the PSC.

#### Prehearing Motions and Conferences

19. The PSC may, at any time prior to the hearing, set a prehearing conference for discussion of, among other things, the feasibility of settlement of any issues in the proceeding, the simplification of issues, the possibility of obtaining admissions of fact and documents, the distribution and marking of written testimony and exhibits prior to the hearing, and such other matters as may aid in the disposition of the proceeding or settlement thereof.

#### Open Meetings

20. All PSC meetings regarding this docket are open meetings except as otherwise required or permitted by law. Parties will not routinely be notified of PSC business meetings or work sessions that may pertain to discussion or action on matters within this docket. Notification of PSC work sessions concerning this docket will be provided to all persons requesting notification

through the PSC's weekly agenda mailing list.

Done and dated this 18th day of June, 2003, by delegation to PSC staff as an Order of the PSC.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman  
THOMAS J. SCHNEIDER, Vice Chairman  
GREG JERGESON, Commissioner  
MATT BRAINARD, Commissioner  
JAY STOVALL, Commissioner

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.